

Message Text

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TO AMEMBASSY NAIROBI

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E.O. 11652: N/A

TAGS: EFIN

SUBJECT: OPIC INVESTMENT INSURANCE - FOREIGN GOVERNMENT
APPROVALS

REF: NAIROBI A-57 (3/27/71)

1. OPIC CURRENTLY LOOKING FOR WORKABLE FOREIGN GOVERNMENT
APPROVAL (FGA) PROCEDURE IN KENYA FOR INVESTMENTS, SUCH AS
LOAN GUARANTIES, WHICH ARE IRREVOCABLY COMMITTED SUBSTANTIALY
IN ADVANCE OF CONTRIBUTION OF FUNDS. BELIEVE CERTIFICATE
OF APPROVED ENTERPRISE NOT SUFFICIENT IN THIS TYPE CASE BE-
CAUSE CERTIFICATE IS NOT ISSUED UNTIL FUNDS CONTRIBUTED.

2. BY LETTER DATED MARCH 16, 1971 FROM P. NDEGWA TO USAID
DIRECTOR SNELL, THE GOK, IN RESPONSE TO DISCUSSIONS WITH USAID
CONCERNING SIMILAR PROBLEMS, AGREED TO ISSUE A CONDITIONAL
CERTIFICATE TO ENABLE US INVESTORS TO OBTAIN INSURANCE PRIOR
TO THE ACTUAL COMMITMENT OR TRANSFER OF FUNDS. THE NDEGWA
LETTER READS IN PART: "I SHOULD LIKE TO SUGGEST, IF IT HELPS
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YOUR GOVERNMENT, THAT WE COULD ISSUE CONDITIONAL CERTIFICATES
OF APPROVED ENTERPRISE SO THAT THE INVESTORS COULD SEEK THE

GUARANTEES THEY WISH FROM YOUR GOVERNMENT CORPORATION. THE CONDITIONS WOULD VARY IN EACH CASE BUT WOULD NOT BE UNREASONABLE AND WOULD GENERALLY RELATE TO THE RECEIPT OF FUNDS IN KENYA, INTEREST RATES ON LOANS, ETC. IF THIS PROCEDURE IS ACCEPTABLE TO YOUR GOVERNMENT PLEASE ADVISE US ACCORDINGLY. /S/P NDEGWA, PERMANENT SECRETARY TO THE TREASURY." OPIC ACCEPTED THE PROCEDURE AND HAS ISSUED CONTRACTS TO INVESTORS, SUBJECT TO THE FULFILLMENT OF THE CONDITIONS AND PERFECTION OF THE FOREIGN GOVERNMENT APPROVAL. THIS PROCEDURE, WHILE NOT IDEAL FROM OPIC'S OR THE INVESTOR'S STANDPOINT, HAS ENABLED OPIC TO ISSUE INSURANCE PRIOR TO ACTUAL INVESTMENT OF FUNDS.

3. OPIC NOW HAS PENDING AN APPLICATION FROM DEL MONTE CORPRATION FOR GUARANTY OF A LOCAL BARCLAYS BANK LOAN. IN CASES SUCH AS GUARANTIES OF LOANS, WHERE INVESTOR'S COMMITMENT TO INVEST SUBSTANTIALLY ANTEDATES INVESTMENT, IT IS UNACCEPTABLE TO OPIC TO ISSUE CONTRACT WHERE POSSIBILITY EXISTS THAT FGA WOULD NOT BE ISSUED EVEN IF FUNDS WERE ACTUALLY PAID OVER, E.G., IF GUARANTY CALLED ON BASIS OF GOK ACTION OR PAYMENT UNDER GUARANTY MADE DIRECTLY TO BARCLAYS OUTSIDE KENYA.

4. IN EARLY JULY, MANSBACH MET WITH GHEEWALA, OF THE MINISTRY OF FINANCE, IN WASHINGTON AND DISCUSSED THESE PROBLEMS. DURING MEETING, GHEEWALA INDICATED STRONG INTEREST IN DEVELOPING PROCEDURE FOR ISSUING, WHEN APPROPRIATE, SOME FORM OF FULL FOREIGN GOVERNMENT APPROVAL IN ADVANCE OF CASH INVESTMENT AND CERTIFICATE OF APPROVED ENTERPRISE.

5. OPIC SUGGESTS THAT A LETTER FORM OF APPROVAL (AS IS USED IN MOST OTHER COUNTRIES) WOULD BE USEFUL FOR COVERING LOAN GUARANTIES OR OTHER TYPES OF INVESTMENTS WHERE COMMITMENT SUBSTANTIALLY ANTEDATES INVESTMENT. SET OUT BELOW IS A SUGGESTED DRAFT APPROVAL LETTER TO BE SUPPLIED TO USG BY GOK:

"OUR GOVERNMENT (THE GOK) HAS BEEN ADVISED BY (NAME OF US CORPORATION) THAT IT HAS PROPOSED TO GUARANTEE A LOAN TO (NAME OF LOCAL COMPANY) FOR THE PURPOSE OF MANUFACTURING (DESCRIBE PROJECT).

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"(NAME OF US CORPORATION) HAS INFORMED THE GOVERNMENT OF KENYA THAT IT IS APPLYING TO THE UNITED STATES GOVERNMENT FOR INVESTMENT INSURANCE FOR THIS LOAN GUARANTEE.

"WE WISH TO INFORM YOU THAT THE (NAME OF LOCAL COMPANY) PROJECT HAS BEEN APPROVED BY THE GOVERNMENT OF KENYA FOR THE PURPOSE OF INVESTMENT INSURANCE AND GUARANTIES THAT MAY BE ISSUED BY THE UNITED STATES GOVERNMENT IN ACCORDANCE WITH THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF KENYA ON THE SUBJECT."

6. REQUEST EMBASSY COMMENTS AND IF EMBASSY CONCURS IN APPROACH,
REQUEST EMBASSY INITIATE DISCUSSIONS WITH APPROPRIATE GOK
OFFICIALS CONCERNING THIS TYPE OF APPROVAL. RUSH

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